



# STATE OF CONNECTICUT

## DEPARTMENT OF SOCIAL SERVICES

OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
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### STATEMENT OPPOSING SENATE BILL NO. 143

#### *An Act Concerning State Agency Compliance with Probate Court Orders*

The Department of Social Services (DSS) opposes Senate Bill No. 143, *An Act Concerning State Agency Compliance with Probate Court Orders*, because the bill (1) conflicts with federal and state law; (2) would result in DSS being bound by probate court orders without having participated in the probate proceedings; (3) would place an undue burden on the courts, DSS and the Attorney General's Office; and, (4) would place an extraordinary burden on state taxpayers.

Section 1 of the proposed legislation provides that "[e]ach state agency shall recognize, apply, and enforce any order, denial or decree of a probate court that is applicable to any determination made by the state agency in a contested case." DSS holds over a thousand fair hearings each year (1,530 hearings held in 2015), which are contested cases. The proposed legislation, if adopted, would bind DSS to probate decrees issued in connection with matters raised at a fair hearing in contravention of federal law and state law.

Federal law requires that the Medicaid State plan must "provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan." 42 USC 1396a (a)(5). DSS is the single state agency designated as "the sole agency to determine eligibility for assistance and services under programs operated and administered by [the] department." Conn. Gen. Stat. § 17b-261b (a).

Federal law provides that DSS must treat the inability of an individual to access funds as a result of a court order made at the individual's request as a transfer. 42 U.S.C. 1396p(c)(1); 42 U.S.C. 1396p(h)(1)(C). The proposed bill appears to violate the federal requirement that DSS impose a transfer of assets penalty in such a case by requiring that DSS appeal the probate court approval of a transfer.

Similarly, state law provides that "[a] disposition of property ordered by a court shall be evaluated [by DSS] in accordance with the standards applied to any other such disposition for the purpose of determining eligibility." Conn. Gen. Stat. § 17b-261 (a). Subsection (c) of section 17b-261 provides, in relevant part, that "[f]or purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. That same subsection also provides that "the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p."

Advocates for applicants for public assistance frequently attempt to circumvent DSS eligibility requirements by going to probate court, before or during the application process, and obtaining decrees that, for example, a trust is not "available" to the beneficiary, or that "fair consideration" was provided in return for the transfer of an asset, or that the applicant retained sufficient funds to meet foreseeable needs, or that a family member lived with and provided services that avoided institutionalization. These are examples of just a few of the types of determinations that DSS is required to make in determining eligibility for assistance. Both state and federal law provide that DSS is the sole state agency to make such decisions in accordance with federal and state law. The proposed bill, however, conflicts with such laws by requiring that DSS recognize, apply and enforce probate court orders, denials, or decrees that effectively make determinations regarding eligibility for public assistance.

Second, the bill is problematic because often DSS does not receive notice of probate court proceedings that result court orders and decrees that would be binding on DSS under the proposed bill. Individuals often petition the probate court before applying for public assistance. To bind DSS to a probate order, denial or decree when it has not received notice of, and the opportunity to participate in, the proceeding is contrary to established case law in the state. Often, the person involved may not have applied for assistance and DSS would have no reason to participate. Further, although the proposed bill affords a right to appeal, the record of the probate court proceeding, if one exists, may be inadequate for appellate review.

Next, the proposed bill would substantially increase the case load of the court system, Attorney General's Office and DSS staff. Either an Assistant Attorney General or a DSS representative would be required to attend any probate hearing that involving a matter involving the eligibility for public assistance even if the subject of the hearing is not an applicant for, or recipient of, public assistance. The Attorney General's Office would incur significant cost in appealing probate court orders deemed contrary to public assistance laws. Probate courts will see an increase in the number of applications filed to obtain favorable decisions in advance of an application for public assistance and the number of appeals filed will significantly increase.

Finally, the proposed bill will significantly increase the amount of public assistance paid by the state. Beneficiaries of multi-million dollar general support trusts will have an incentive to obtain a probate court ruling, in advance of applying for public assistance, construing or amending the trust to be a supplemental support trust (which we have seen happen) and then apply for assistance. DSS would be forced to appeal the decision, rather than determining eligibility without considering the probate decree and requiring the applicant to go through the administrative hearing process if the applicant felt aggrieved by the department's eligibility determination. Ultimately, the state may end up paying for public assistance that, but for the probate court decree or order, the individual would have been determined ineligible for assistance.